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Defendant SHAKEY'S PIZZA ASIA  
VENTURES, INC. and Third-Party Defendants  
CINCO CORPORATION, PC  
INTERNATIONAL PTE LTD., and SPAVI  
INTERNATIONAL USA, INC.

**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

SHAKEY'S PIZZA ASIA VENTURES,  
INC, a Philippines corporation,

Plaintiff,

v.

PCJV USA, LLC, a Delaware limited  
liability company; PCI TRADING,  
LLC, a Delaware limited liability  
company; GUY KOREN, an individual;  
POTATO CORNER LA GROUP, LLC,  
a California limited liability company;  
NKM CAPITAL GROUP, LLC, a  
California limited liability company;  
J & K AMERICANA, LLC, a California  
limited liability company; J&K  
LAKEWOOD, LLC, a California  
limited liability company; J&K  
VALLEY FAIR, LLC, a California  
limited liability company; J & K  
ONTARIO, LLC, a California limited  
liability company; HLK MILPITAS,  
LLC, a California, limited liability  
company; GK CERRITOS, LLC, a  
California, limited liability company;  
J&K PC TRUCKS, LLC, a California  
limited liability company; and, GK  
CAPITAL GROUP, LLC, a California  
limited liability company and DOES 1  
through 100, inclusive,

Defendants.

Case No. 2:24-CV-04546-SB(AGRx)

*The Hon. Stanley Blumenfeld, Jr.*

**PLAINTIFF SHAKEY'S PIZZA  
ASIAN VENTURES, INC.'S  
OPPOSITION TO DEFENDANT  
PCJV USA, LLC'S MOTION FOR  
1. SANCTIONS AGAINST  
PLAINTIFF SHAKEY'S PIZZA  
ASIA VENTURES, INC. UNDER  
FRCP RULE 37(B)(2)(A) AND 2.  
PAYMENT OF EXPENSES  
AGAINST PLAINTIFF AND ITS  
COUNSEL OF RECORD UNDER  
FRCP RULE 37(B)(2)(C) FOR  
FAILURE TO COMPLY WITH  
THE MAGISTRATE JUDGE'S  
COURT ORDER DATED MARCH  
12, 2025 (DKT. NO. 128)**

Date: May 22, 2025

Time: 1:30 p.m.

Complaint Filed: May 31, 2024  
Trial Date: August 4, 2025

PCJV USA, LLC, a Delaware limited liability company; PCI TRADING LLC, a Delaware limited liability company; POTATO CORNER LA GROUP LLC, a California limited liability company; GK CAPITAL GROUP, LLC, a California limited liability company; NKM CAPITAL GROUP LLC, a California limited liability company; and GUY KOREN, an individual,

Counter-Claimants,

v.

SHAKEY'S PIZZA ASIA VENTURES, INC, a Philippines corporation,

Counter Defendant.

PCJV USA, LLC, a Delaware limited liability company; PCI TRADING LLC, a Delaware limited liability company; POTATO CORNER LA GROUP LLC, a California limited liability company; GK CAPITAL GROUP, LLC, a California limited liability company; NKM CAPITAL GROUP LLC, a California limited liability company; and GUY KOREN, an individual,

Third Party Plaintiffs,

v.

PC INTERNATIONAL PTE LTD., a Singapore business entity; SPAVI INTERNATIONAL USA, INC., a California corporation; CINCO CORPORATION, a Philippines corporation; and DOES 1 through 10, inclusive,

Third Party Defendants.

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1 Plaintiff Shakey's Pizza Asia Ventures, Inc. ("Plaintiff" or "SPAVI"),  
2 through its attorneys, oppose Defendant PCJV USA, LLC's (the "Defendant")  
3 Motion For (1) Sanctions against Plaintiff Shakey's Pizza Asia Ventures, Inc. under  
4 FRCP Rule 37(B)(2)(A); and (2) Payment of Expenses against Plaintiff and its  
5 Counsel of Record under FRCP Rule 37(B)(2)(C) for Failure to Comply with The  
6 Magistrate Judge's Court Order Dated March 12, 2025 (Dkt. No. 128) (the  
7 "Motion"), as follows: <sup>1</sup>

8 **I. INTRODUCTION**

9 The Court should deny Defendants' Motion for what it is—an ill-disguised  
10 attempt to weaponize a discovery order entered into voluntarily by SPAVI, after an  
11 discovery conference with the Magistrate on March 12, 2025 (the "Order" at Dkt.  
12 128). Notwithstanding that most of the discovery at issue sought information that is  
13 irrelevant to any fact to be tried in this case, and all of it was wildly overbroad and  
14 lacking in any proportionality – such that SPAVI was confident of its objections –  
15 for the purpose of cooperation and removing distractions of unnecessary discovery  
16 briefing (!), SPAVI agreed to produce documents pursuant to a protocol and  
17 limitations agreed to by all parties.

18 SPAVI's counsel entered into this agreement – and voluntary order – after a  
19 discussion on the record addressing the complication of the fact that the agreements  
20 on document production would have to be completed into a short period of time  
21 given the current discovery cutoff date – a conversation in which Mr. Murphy was  
22 express about his not having all the information needed to predict timing (and,

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23 <sup>1</sup> Initially it was contemplated that this Opposition would be filed concurrently with  
24 a Cross-Motion for Reconsideration as to the Discovery Order at issue and, as such,  
25 April 25, 2025 was the date on which that Cross-Motion and this Opposition was to  
26 be filed. Given the serious defects of the Motion responded to herein, that must be  
27 resolved before the Order itself may be reconsidered, Plaintiffs are not filing a  
28 motion to reconsider. Plaintiff's counsel asked Defendants' counsel to alter this  
briefing schedule so that it reverts to the typical Opposition deadline of 14 days  
prior, however, Defendants counsel was unwilling to agree to that stipulation while  
not explaining his basis for doing so. (Murphy Decl., filed concurrently herewith at  
¶¶ 68-70; Exh. 17.) As such, Plaintiff asks leave of his Court to consider a filing  
late as per Dkt 144 but timely under standard motion practice



indeed, the search terms had not yet been set). (Declaration of Michael Murphy in Opposition to Rule 37 Motion (“Murphy Decl.”) ¶ 30; Exh. 16 (Transcript of March 12, 2025 Discovery Conference at 95:9-101:3).)

The following statement was made on the record that was neither repudiated nor denied by Defendants’ counsel:

MR. MALYNN: Yeah. Our problem is that the crossclaims, third-party claims have now brought in additional parties, and the trade secret claim is somewhat new. **And so there was always kind of an understanding, we're going to have get a new scheduling order.** So -- and I actually have an e-mail ready to send to them about our proposal, but I don't think we can really tie it to that because we all know it's going to be changed.

(Exh. 16 at 97:7-14.) This statement (in addition to the prior, repeated, requests by Defendants to revise the CMO) to which there was no distancing by Defendants’ counsel, caused SPAVI’s counsel to believe that it could enter into the voluntary order because if the document production turned out to be more voluminous, the stipulation to a new CMO plus the requirements for meeting and conferring built in, gave Plaintiff enough pressure release valves to agree.

Once the March 12, 2025 Order was entered, Defendants set out on a course designed to ensure Plaintiff’s inability to comply, a strategy that included: burying Plaintiff in briefs and other paper while refusing extensions; refusing to meet and confer as to search terms, refusing to agree on extensions to compliance deadlines (while not actually asking the reason), ignoring proposals that would circumvent the first 20 Requests at issue, and, of course, the rapid 180-degree turnaround on the scheduling order. Their sudden, and stunning, reversal on the scheduling order was expressly (indeed, Defendants’ counsel admitted this) to capitalize on the strategic



1 value of having induced Plaintiff into believing they would agree, and they are  
2 changing course at the moment they knew Plaintiff's reliance would have caused it  
3 prejudice.

4 As set forth herein, these are not the circumstances by which sanctions are to  
5 be ordered under Rule 37. Putting aside that Plaintiff can find no case in which a  
6 voluntary stipulation pursuant to a discovery conference before a Magistrate (when  
7 no motion to compel has ever been filed), results in sanctions of any kind, had  
8 Plaintiff known that Defendants would change their position as to the CMO, and  
9 would refuse to meet and confer, or cooperate and allow for reasonable extensions  
10 – all designed to set Plaintiff up to fail – Plaintiff would have refused, and simply  
11 demanded that Defendant pursue discovery motions justifying the absurd discovery.

12 As shown herein, Defendants do not actually want the discovery at issue.  
13 They have been offered proposals that would give them more than what was agreed  
14 to and declined to respond. They refused to provide input on the search terms they  
15 previously claimed were so important. They refused to consider the need for extra  
16 time. This has all been a charade, designed to trap Plaintiff into a voluntary  
17 discovery order and, who, the record clearly shows, has been desirous of producing  
18 documents, so long as SPAVI's rights are protected. Indeed, Defendants have not  
19 produced a single document, other than an expert report and his supporting papers  
20 (pursuant to the Magistrate's April 4, 2025 ruling).

## 21 **II. RELEVANT FACTS AND PROCEDURAL HISTORY**

22 SPAVI is a restaurant chain and food service company that is the sole owner  
23 of the "Potato Corner" brand, an international fast food outlet chain that proudly  
24 sells a variety of flavored fries and other menu items. At issue in this case is  
25 Defendant PCJV USA, LLC's ("PCJV") loss of rights to use the brand, on May 31,  
26 2024, after a decade and a half of being the sole licensee in the United States, and  
27 opening nearly 40 stores, without paying a single thin cent for the rights to the  
28 brand. PCJV ignored the termination of its license, and continued using the Potato

1 Corner brand, causing this lawsuit to be filed against PCJV and its principal  
2 (Defendant Guy Koren) who owns and controls the remaining Defendants who  
3 operate Potato Corners under sublicenses with PCJV (that also terminated).

4 PCJV desperately wants to prove that its rights to use the brand continued  
5 after May 31, 2024 (even though there was no written license agreement). Those  
6 efforts have failed spectacularly, as PCJV and Koren have since been enjoined from  
7 using the Potato Corner brand, and their knowing refusal to comply with that order  
8 has resulted in one contempt ruling. (Dkt. Nos. 56, 155.)

9 Nevertheless, PCJV is keen on lobbing the same alleged facts and legally  
10 untenable arguments rejected during the injunction, particularly in contexts like  
11 this, in which it is not bound by the obligation to substantiate a fact with competent  
12 evidence or support its legal arguments with good law.

13 **A. Relevant Underlying Facts Supported by Evidence in the Record.**

14 “Potato Corner” was previously owned by Cinco, and as one of its founders,  
15 Jose P. Magsaysay, Jr. testifies, it began with one potato corner cart in 1992 and  
16 soon became a worldwide phenomenon. (Dkt. 44-3 (Magsaysay Decl., ¶ 2-12.))

17 In December 2021, SPAVI entered into a transaction to acquire the Potato  
18 Corner Intellectual Property (“PCIP”) from the founders, including the international  
19 registrations for the Potato Corner Standard Characters Mark, the Potato Corner  
20 Logo Mark, one tag line mark, and all of the rights thereto, from Cinco. (Dkt. 44-10  
21 through 44-15). That transaction closed during the first half of 2022.<sup>x</sup>

22 The dates of first use arise from Cinco’s first use, and despite having said,  
23 repeatedly, they used the marks first, this is untrue. Defendants have no proof that  
24 they used the marks first, except in the context of the absurd argument that they, as  
25 licensees of SPAVI used the marks in the United States first (on behalf of Cinco,  
26 the licensor). This apparent claim, adverse possession by a licensor, is ludicrous  
27 and, if it were the law, would collapse the entire trademark licensing regime by  
28 making licensors and licensee adverse competitors.

SPAVI spent more than two years from the announcement of its acquisition of the Potato Corner Intellectual Property attempting to enter into a written license agreement with PCJV and PCIT. (Dkt 44-5 (Leong-Tan Decl. ¶ 33-66; and Dkt 44-6 (Alvero Decl. at ¶¶ 10-19). Despite SPAVI's good faith negotiations, Koren abandoned the negotiations and was unwilling to enter a commercially viable license agreement, refusing to produce financials for his stores. (Dkt 44-5, Leong-Tan Decl. ¶ 52-66.) For these reasons, on May 31, 2024, SPAVI terminated the at-will license currently enjoyed by PCJV, PCIT, and the Koren Affiliates that operate Potato Corner franchisees of PCJV.

On May 31, 2024, Plaintiff filed its Complaint against Defendants (Dkt. 1), hours after Plaintiffs terminated the at will license of Defendant PCJV (licensee), and its owner (Koren), the supply chain affiliate (PCIT), and sublicensees (the remaining Defendants) refused to cease using the Trademarks. In fact, none of the Defendants, let alone Koren, reached to communicate with SPAVI after receipt of the letter, not even to ask to discuss the document – they pretended it never happened. (Dkt. 38-1 (Gregorio Decl., 73.)

**B. Defendant's Litigation Strategy to Bury Plaintiff in an Avalanche of Paper Arguing Frivolous Theories Based on Unprovable Facts.**

For SPAVI, protection of its brand is key and a primary purpose of this litigation. (Murphy Decl., ¶¶ 3-7) Moreover, SPAVI must have the market cleared of the damage caused to the brand by Defendants, who, at the end of the day, are nothing holdover licensees who refuse to give up the rights they lost to someone else's brand.

On September 6, 2024, this Court expressed caution to all parties that if any party, including Defendants, wanted to seek injunctive relief, that party needed to try to obtain actual proof of irreparable harm, because the Court was disinclined to presume such harm so long as a scintilla of proof rebutting it is raised. (Murphy Decl., ¶¶ 8-9) The Plaintiff set out to catalog and prove its actual irreparable harm

1 from, Defendants wanton use of a brand to which they have no rights (including  
2 loss of control over brand standards leading to use of expired flavoring, failure to  
3 protect brand from other infringers, etc.). (Id at ¶¶ 8-9; *see also* Dkt 44 (describing  
4 same).

5 Meanwhile, on September 19, 2024, Defendants gave notice for a truly  
6 absurd Ex Parte Application seeking a mandatory injunction requiring Plaintiffs to  
7 ship their proprietary flavorings to Defendants. (Dkt. 37.) Opposing this Motion  
8 cost Plaintiffs tens of thousands of dollars alone, and the facts and law on which it  
9 was based utterly lacking in probable cause, and promptly denied (Murphy Decl.,  
10 ¶ 10; Dkt. 37-39.)

11 Plaintiff's successful injunction motion soon followed, which was, and  
12 remains the first time any party has put actual, competent, and conclusive evidence  
13 establishing using each element of the trademark claims and as was discovered  
14 during the search for new evidence, proof that Defendants were now taking  
15 flavoring packages for which they have no rights, and reverse engineering them.  
16 (Dkt. 44 -44-45.) The Opposition provided no evidence or law to oppose the  
17 Motion, offering outlandish theories based on manufactured legal theories and  
18 unsupportable facts. (Dkt. 48-48-10). The Injunction was granted (Dkt.56) even  
19 after Defendants were given the chance to identify this mysterious order, they claim  
20 to effect claim and issue preclusion of this whole case, and failed (Dkt, 52, 53, 56.)<sup>2</sup>

21 Having now revealed that their factual assertions have no evidentiary  
22 support, and that their legal theories are manifestly frivolous, unequivocally  
23 unwarranted (indeed *contradicted* by the very law they cite, the strategy of  
24 Defendants was now revealed: bury Plaintiff in so many motions, ex parte  
25 applications, causes of action, and briefs containing outrageous distortions of law  
26

27 <sup>2</sup> Defendants, they continue to wave a preliminary injunction ruling from the prior  
28 case with Cinco, claiming issue or claim preclusion, unconcerned with the various  
reasons why the Court shot that down (i.e. That Order does not say what the claim,  
preliminary injunctions have no preclusive effect, etc.)

1 and fact, so that Plaintiff does not have the time or bandwidth to participate in  
2 discovery, or fully protect the marks, given that fighting a contemptuous knock off  
3 brand requires a full time army of lawyers.

4 Between September 20, 2024 and January 31, 2025, Plaintiffs were forced to  
5 oppose ten Motions, Requests for Orders, or Requests for Emergency Orders  
6 (including two in the Ninth Circuit and one in front of SCOTUS. (Murphy Decl.,  
7 ¶¶ 121-14; Dkt Nos. 41, 46, 58-61, 63-64, 71, 72-72, 75-78, 80, 85, 88-89, 92, 94,  
8 95.) Half of these had to be briefed over Thanksgiving weekend, and the Christmas  
9 holiday (professional courtesies soundly denied by Defendant's' counsel). (*Id.*)

10 Plaintiff, however, had multiple orders reaffirming the likelihood of success  
11 in this action on the trademark claims, and an injunction. However, the injunction  
12 was being so brazenly disregarded, an OSC re contempt was necessary. And that  
13 lengthy process ensued from December 26, 2024 through April 15, 2025 (Dkt.  
14 155.)

15 Defendants' brazen strategy of burying the owner of the IP they are stealing  
16 with frivolous motions, disregarding Court orders in a contemptuous way, using  
17 frivolous theories and allegations of fact that are lacking in any probable cause in  
18 filing, after filing, has forced Plaintiffs to incur multiple 6-figures in attorneys' fees  
19 just to attempt to obtain injunction orders and coerce compliance – which  
20 Defendants still refuse. (Murphy Decl., ¶¶ 14-15.)

21 C. **Defendants Repeatedly Request A New CMO and Trial Date, to**  
22 **Which Plaintiff Agreed, and the Court Indicated it Would**  
23 **Support.**

24 The moment Plaintiffs filed their Amended Complaint, alleging a new claim  
25 of trade secret misappropriation (based entirely on the admissions of Defendants  
26 themselves, Dkt.65, ¶¶ 88-92, and 170-176.) Plaintiffs moved ex parte to have the  
27 claim stricken. (Dkt. 72.) The Court, in denying the Application, stated a footnote 2  
28 (Dkt. 80, p.2), that a new Case Management Order would be considered if the new

1 claim affected deadline compliance. Within a day or so after that Order came  
2 Defendants' first request to obtain a new trial schedule. (Murphy Decl., ¶¶ 16-17.)  
3 At first Plaintiff was not sure, however, given the inability to focus on discovery  
4 because of continued contempt. (Murphy Decl., ¶ 16-17.)

5 Defendants subsequently requested agreement on a new CMO both verbally,  
6 as well as at least three or four in writing. (Murphy Decl., ¶¶ 16-22; Exhs. 1, 3.)  
7 Defendants sought reassurance (at the worst possible time, during the LA fires), and  
8 then asked for a more specific continuance of "90 days"). (Murphy Decl., ¶¶ 18-  
9 20.)

10 On February 21, 2025, SPAVI's counsel switched law firms, such that it was  
11 hard to get anything done other than, of course, finding more acts of contempt  
12 which was presented at the February 28, 2025 hearing. (Murphy Decl., ¶¶ 21-23;  
13 Dkt. 115-117.)

14 At a Court ordered meet and confer at the offices of Mr. Murphy's new firm  
15 on March 5, 2024, the need for a new Case Management Order was raised, but now,  
16 Defendants' counsel insisted that it was Plaintiff that was obligated to propose a  
17 new order. (Murphy Decl., ¶ 22.) Given the ongoing contempt briefing, and this  
18 discovery proceeding, it could not be done that week. (*Id.*)

19 Various contemporaneous acts of Defendants confirmed their continuing  
20 agreement to a new CMO such as (1) the naming of three new Third Party  
21 Defendants (Cinco, PC international PTE, Ltd., and SPAVI International USA, Inc.  
22 none of whom have had the right to any discovery or dispositive motions  
23 (obviously Defendants knew a new trial date was required; and (2) Defendants  
24 served their initial disclosures on February 28 2025, less than thirty days before the  
25 close of discovery. (Murphy Decl., ¶¶ 25-29; Exh.5 (Defendants' Initial Disclosures  
26 served less than 30 days before the close of discovery).)

27 To date, other than an expert report, and court ordered expert document,  
28 Defendants have not produced any documents whatsoever. (Murphy Decl., ¶ 29.)



1 Defendant refused to respond to any of Plaintiffs' requests for production (Exhibit 4  
2 hereto) and have not produced a single responsive document. (*Id.*)

3 **D. The March 12 Hearing Wherein Under Great Pressure Counsel**  
4 **Had to Make Decisions Without Clients Available and Under False**  
5 **Pretenses Created by Defendants' Counsel.**

6 On March 12, 2025, this Court conducted the Discovery Conference at issue,  
7 in which Defendants demanded full compliance with all twenty-eight of its  
8 Requests for Production, and a new response to Interrogatory No. 1. The Magistrate  
9 never ordered this, and yet, this is the Order Defendants think they were entitled to  
10 compliance with. Indeed, the Motion doesn't reference the Order at all, instead, it  
11 suggests compliance with all 27 Requests for Production that was ordered.  
12 Defendants should first be forced to prove the propriety of each such Request, and,  
13 at a minimum, with respect to each specific aspect of Order, explain as to how they  
14 have been prejudiced by that specific alleged noncompliance.

15 **1. The Magistrate Invited Plaintiff's Concessions While**  
16 **Disagreeing with the Scope of Defendants' Requests and**  
17 **Justifications.**

18 Defendants spent much of the hearing complaining as they do in their Motion  
19 (falsely) that SPAVI has produced "no evidence" of its ownership of the PCIP. To  
20 the contrary, **SPAVI produced documents establishing conclusively that it owns**  
21 **the marks**. Specifically, SPAVI has produced: (1) testimony from Cinco's founder  
22 and CEO during 2021 and 2022 (Mr. Magsaysay) that it sold to SPAVI the PCIP  
23 that Defendants are using (Dkt 44-3 (Magsaysay Decl., ¶¶ 2, 13-16, 61)); (2)  
24 testimony from SPAVI's General Counsel (Ms. Ybanez) and CEO (Mr. Gregorio)  
25 that SPAVI acquired from Cinco the PCIP that Defendants are using (Dkt 44-2  
26 (Ybanez Decl., ¶¶ 2-6); Gregorio Decl., ¶¶ 10-13); (3) *notarized* deeds submitted to,  
27 accepted by, and posted on the website of the United States Patent and Trademark  
28 Office ("USPTO"). Those deeds – sworn declarations of ownership by a seller and



1 a buyer – describe expressly what was transferred, and each states, expressly, the  
2 Potato Corner Defendants are using was owned by Cinco and is now owned by  
3 Shakey’s Pizza Asia Ventures, Inc. – a fact further confirmed by looking at the  
4 registrations SPAVI has also produced, and that were authenticated by Ms. Ybanez.  
5 (Dkt. 44-10-16); Ybanez Decl., ¶¶ 2-6.) **This is conclusive proof of ownership.**

6 Defendants peddled the preposterous and logically impossible theory  
7 (perpetuated in their Injunction Opposition and now their frivolous counter and  
8 third-party claims (Dkt. 45, 108)) that –Cinco’s sale actually excluded the “US  
9 Registrations” because Cinco and SPAVI both secretly knew that Koren had either  
10 ownership of or permanently license rights to the “US registrations.” Of course, US  
11 Registrations with international registration numbers do not carve out individual  
12 jurisdictions as fiefdoms; indeed, that is what the Madrid Protocol (imposing an  
13 international trademark regime) was designed to avoid.<sup>3</sup>

14 The primary focus of the hearing was Defendants’ RFP Nos.1-20, seeking  
15 every aspect of the transaction between Cino and SPAVI, wherein the Potato  
16 Cortner IP was sold. There is no relevance to the documents as there is no dispute  
17 that SPAVI owns, the Potato Corner IP. Moreover, the requests were drafted in an  
18 objectionable way, and, most importantly, Defendants are competitors of Plaintiff,  
19 and were demanding to see sensitive business financial, marketing, operational data  
20 of a sensitive nature that no competitor should see. (Murphy Decl., ¶¶ 30-36.)

21 A reflected in Exhibit 16, unimpressed, and unwilling to insist that the  
22

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23 <sup>33</sup> Defendants’ fn. 1 is nonsense and designed to mislead as support for its defense  
24 of this case. Shakey’s is a brand whose US trademark registrations are the same as  
25 its international registration number(Exhs 6and 7 hereto), which are owned by  
26 Shakey’s USA, Inc. SPAVI does indeed have the right to use the marks  
27 internationally, but only because Shakey’s USA, Inc. **licensed** to SPAVI the rights  
28 to use the marks in those territories. In this case, Plaintiff owns the international  
registration numbers for Potato Corner, giving it the right to use the marks  
anywhere in the world. Had PCJV negotiated the right to use the marks in the US, it  
would have the right to do so in this territory. But the suggestion that there is a “US  
Registration” or “US rights” conferred by the USPTO is false and a misstatement of  
trademark law. Territorial rights are a function of agreements between licensee and  
licensor.

entirety of the transaction related requests be complied with, the Magistrate nevertheless urged Plaintiff to consider allowing access to transaction documents that refer to the US operations, PCJV, the prior litigation, or sale of the intellectual property, generally. (Murphy Decl., ¶¶ 39-40.) The parties agreed to focus the transactional documents on anything referring to US Operations, or that refer specifically to the sale of trademarks and IP and that search terms revealing the same would have to be negotiated between the parties. (Murphy Decl., ¶40.)

With respect to the remaining requests related to trade secret theft, the Magistrate asked Plaintiff to agree to produce evidence of the trade secret after revising Interrog. 1 (essentially the same as a Trade Secret Disclosure under the CUTSA), re-starting what its trade secrets are that are alleged to have been stolen – such that all that remained would be agreement between the parties as to the search terms to be applied. (Murphy Decl., ¶ 41.) Other categories were simply not controversial in substance – the procedure was the issue.

**2. Counsel for Plaintiff Agreed to Review and Produce Documents With a Wildy Short Time, Based on Facts and Assumptions that He and the Magistrate Reasonably Believed to be True, and were Not; Most of Which was Knowingly Induced by Defendants’ Counsel.**

Plaintiffs’ counsel believes it approached the March 12 hearing in good faith, wanting to avoid motion, and to produce as much as possible. Nevertheless, Defendants are now competitors of Plaintiff – having purportedly replaced Potato Corner with “Undercover Fries,” although the marketing has effectively attached itself to Potato Corer in a manner that reveals continued desire to use the Potato Corner branding in violation of Court orders. (Murphy Dec., ¶ 34; Exhs. 14-15.)

The bigger issues, however, resulted from the fact that the search terms actually employed yielded 40,000+ documents, each of which had to be looked at by a lawyer or privilege and privacy, and, as to the trade secret documents a huge

1 flaw in the production was revealed (Murphy Dec., ¶ 43.). Specifically, Defendants  
2 have admitted to reverse engineering but have never disclosed which flavors they  
3 reverse engineered. As such it is impossible to produce the specific packages that  
4 were reverse engineered because Defendants have concealed this information.

5 SPAVI's counsel entered into this agreement – and voluntary order – after a  
6 discussion on the record addressing the complication of the fact that the agreements  
7 on document production would have to be completed into a short period of time  
8 given the current discovery cutoff date – a conversation in which Mr. Murphy was  
9 express about his not having all the information needed to predict timing (and,  
10 indeed, the search terms had not yet been set). (Exh. 16 (Transcript of March 12,  
11 2025 Discovery Conference at 95:9-101:3).)

12 The biggest problem confront compliance was that, when it was discovered  
13 thew short deadline to complete this task, the following statement was made on the  
14 record that was neither repudiated nor denied by Defendants' counsel:

15 MR. MALYNN: Yeah. Our problem is that the  
16 crossclaims, third-party claims have now brought in  
17 additional parties, and the trade secret claim is somewhat  
18 new. **And so there was always kind of an**  
19 **understanding, we're going to have get a new**  
20 **scheduling order.** So -- and I actually have an e-mail  
21 ready to send to them about our proposal, but I don't  
22 think we can really tie it to that because we all know it's  
23 going to be changed.

24 (Exh 16 at 97:7-14.) This statement (in addition to the prior, repeated, requests by  
25 Defendants to revise the CMO) to which there was no distancing by Defendants'  
26 counsel, caused SPAVI's counsel to believe that it could enter into the voluntary  
27 order because if the document production turned out to be more voluminous, the  
28 stipulation to a new CMO plus the requirements for meeting and conferring built in,

1 gave Plaintiff enough pressure release valves to agree. (Murphy Decl., ¶¶ 44-48.)

2 E. **Defendants’ Motion Conceals Their Own Conduct Interfering**  
3 **with Compliance, Including the *Day After* Issuance of the Order,**

4 The day after the Order was issued, Plaintiffs’ counsel remembered that there  
5 were a variety of onerous discovery Requests due that day (Interrogatories and  
6 Requests for Production). (Murphy Decl. ¶¶ 49-57; Exh. 8.) As such, he asked for  
7 an extension, and Defendants ***refused***, and persisted with the refusal even after he  
8 disclosed, he would have to stay up all night so as to ensure that the person  
9 verifying would be able to review (being in Manila). (Exh. 8.)

10 In the face of this egregious lack of professionalism, Mr. Murphy did indeed  
11 stay up all night answering the discovery and writing with a verifying party in  
12 Manila to complete them. (Murphy Decl., ¶ 53-56.) Given his exhaustion and  
13 having now ignored other clients for two full business days, he was unable to begin  
14 the work necessary in Special Interrogatory No. 1 by the deadline of early the  
15 following week.

16 Significantly that same day, and in that same email, **March 13, 2025,**  
17 **Plaintiffs’ counsel asked to meet and confer about search terms right away,**  
18 **rather than wait.** (See Exh. 8, pp.8-9 Malynn’s response at 12:09 to the prior email  
19 by Plaintiff’s counsel ). In the same email exchange, Defendants simply refused,  
20 expecting Plaintiff to guess what it was they wanted the search terms to be for their  
21 own discovery. (Murphy Decl., ¶¶ 54-57.) This absurd process would require  
22 Plaintiff to go back and forth now multiple times for searches when one around  
23 could be avoided, if they would just meet and confer

24 An inauspicious beginning and hinting at Defendants’ real goals.

25 F. **In Less than Two Weeks – by March 24, 2025 – Defendants had**  
26 **Repudiated a need for a New CMO, Refused to Meet and Confer,**  
27 **and Rejected Plaintiff’s Request for More Time to Comply**

28 The final comment in the first email from Defendants’ counsel the day after

1 the Order, on March 13, 2020 (Exh. 8, December 13, 2025 at 12:09 pm), was  
2 alarming, as it phrased the CMO issue as being something that had been proposed  
3 by Plaintiff, to them and then ignored (contrary to the record).

4 Accordingly, counsel for Plaintiff drafted a new CMO and presented it in an  
5 email a week later and asked to meet and confer about that, as well as Plaintiffs'  
6 need for more time to comply with the Order. (Exh, 9, p.5-6.)

7 Defendants' response was to refuse to meet and confer about anything. (Exh.  
8 9.) They refused to consider the request for more time (without asking why, for  
9 example). Had they asked why, Plaintiffs' counsel would have explained the  
10 voluminous result from the search terms (that Defendants refused to meet and  
11 confer upon), and the need for attorneys' eyes on every page. Defendants simply  
12 refused.

13 In that same email, Defendants' counsel, mind bogglingly, rejected any need  
14 for a new trial date. The entirety of the email exchange is truly astonishing,  
15 particularly Mr. Beral's recitation of the facts suggesting that they decided in  
16 December to forgo a new CMO. (Exh 9.)

17 **G. Defendants' Motion Simply Lies About What they Received,**  
18 **Confirming they Do not Want any of this Information at Issue,**  
19 **they Just Want Sanctions.**

20 The Motion claims "Plaintiff still has not produced a list of search terms or  
21 record custodians, let alone the ordered means to evaluate the same." (Dkt 53-1. Pp  
22 22:10-11). "**This is provably false.** as revealed in Exh 10 – an April 4, 2025 email  
23 and the attachment, in which Plaintiffs most certainly did disclose the search terms  
24 and custodians they had used to conduct a search. (Murphy Decl., ¶¶ IONSDERT;  
25 Exhs. 10 and 10.1.) Notably, and again, the refusal by Defendant to meet and confer  
26 resulted in Plaintiffs using these terms and it resulted in a catch of 40,000+  
27 documents, that still have not been reviewed, in full. (Murphy Decl., ¶¶ 64-67.)

28 Other than the snarky response reflected in Exh.11, Defendants ignored this

1 email and never discussed search terms ever again. (Murphy Decl., ¶ 62; Exh.11.)  
2 And yet they want sanctions because they argue they did not receive it? This is the  
3 definition of an abusive, and crazy-making, motion

4 Finally, and most astonishingly, on April 11, 2024, Plaintiff sent a proposal  
5 for Defendant to see the transactional document – Exh. 12 – the entire deal.  
6 (Murphy Decl., ¶¶ 54-57.) It did have restrictions, but this is the crown jewel of  
7 Defendants’ theory and, although Plaintiff would likely have prevailed on the  
8 disclosure of the entire document, saw the value to everyone in Defendants actually  
9 seeing the deal. **Defendants never responded**. They refused to even express an  
10 objection to the procedure or propose alternatives. They ignored the proposal until  
11 filing a motion for sanctions.

12 This confirms that Defendants never wanted to see the transaction. They  
13 didn’t want any of these documents. They do not care. This is about sanctions.

14 Indeed, the very assertion in the Motion that compliance after April 11, 2025  
15 is not acceptable belies their true goal. There is nothing magic about April 11, 2025.  
16 The plaintiff is still preparing for trial. This was all about a manufactured deadline,  
17 reinforced by the deceitful lure of a new CMO,

18 **H. Defendants Failed to Meet and Confer Prior to Filing this Motion.**

19 This Motion has a meet and confer requirement, and Defendants make no  
20 effort to establish that they satisfied the requirement. To the contrary, as set forth  
21 herein (Exhs. 8-12), Plaintiff has been begging to meet and confer over search  
22 terms, deadlines, inspection of the transactional documents, and Defendants’  
23 counsel has refused. This confirms that this motion is not about discovery, it is  
24 about sanctions.

25 **III. PLAINTIFFS’ MOTION SHOULD BE DENIED IN FULL.**

26 **A. THE FULL, COMPLETE, AND ACCURATE LEGAL**  
27 **STANDARD**

28 Whether to impose a sanction under Federal Rules of Civil Procedure Rule



37 is a matter of the Court's discretion. *See Marchand v. Mercy Medical Center* 22 F.3d 933 (9th Cir.1994). The purpose of the Rule is to deter discovery abuse and promote full and efficient discovery. *See Id.* Further, sanctions “are appropriate only in ‘extreme circumstances’ and where the violation is ‘due to willfulness, bad faith, or fault of the party’.” *Tacori Enterprise*, 253 F.R.D. at 582 (quoting *Fair Housing of Marin v. Combs*, 285 F.3d 899, 905 (9th Cir.), *cert. denied*, 537 U.S. 1018, 123 S.Ct. 536, 154 L.Ed.2d 425 (2002)).

To have sanctions imposed against an opposing party under Rule 37(b)(2)(A), the discovering party must first prevail on a motion to compel and obtain an Order pursuant to Rule 37(a). Courts have held that motions for sanctions for failure to comply with discovery requests can be denied where the motion was made prior to a motion to compel. *Markham v. Colonial Mortg. Service Co., Associates, Inc.*, 605 F.2d 566, 571 (C.A.D.C., 1979); *Unigard Security Ins. Co. v. Lakewood Engineering & Mfg. Corp.* (9th Cir. 1992) 982 F2d 363, 367.

Rule 37(b)(2)(C) requires that a district court, instead of or in addition to nonmonetary sanctions allowed in Rule 37(b)(2)(A), “order the disobedient party, the attorney advising that party, or both to pay the reasonable expenses, including attorney's fees, caused by the [discovery] failure, unless the failure was substantially justified or other circumstances make an award of expenses unjust.” Fed. R. Civ. P. 37(b)(2)(C).

This Court should deny Defendant’s motion for sanctions pursuant to Federal Rules of Civil Procedure 37(b)(2)(A) and 37(b)(2)(C) since Defendant was not prejudiced and, despite Defendant’s allegations to the contrary, Plaintiff’s conduct was neither willful nor in bad faith.

**B. The Various Procedural Flaws Require that this Motion be Denied.**

First, Defendants should have prevailed on a motion to compel and obtain an Order pursuant to Rule 37(a) to obtain relief under Rule 37(b). Despite all



1 Defendants' allegations, PCJV never filed an initial Motion to Compel prior to  
2 filing this motion for sanctions. As alluded to above, if Discovery Conferences  
3 could be used by a party to create traps for their opponent to violate agreements  
4 to comply with objectionable discovery, the entire informal discovery conference  
5 process would be undermined.

6 Second, Rule 37(a) of the Federal Rules requires a good faith meet and  
7 confer that is certified by the Motion itself. Defendants make no such certification,  
8 nor could it, given that Exhs. 8-12 reveal the opposite: Defendants were not  
9 concerned about meet and conferring, they were obsessed with the date of April 11.  
10 They would not budge if that date were not satisfied. The failure to meet and confer  
11 alone, is grounds to deny.

12 Third, Defendants' Motion fails to identify any specific aspect of the Order  
13 that they claim was not complied with, and that prejudice them. Instead, their  
14 histrionic motion pretends that their RFPs were ordered, in full, and they  
15 misrepresent their obligation to meet and confer about search terms, etc. The  
16 failure of Defendants to ground their Motion in the Order itself, is a fatal defect.

17 C. **The Motion Should be Denied because the Full Proof Shows that**  
18 **Plaintiffs' Alleged Violations Did Not Constitute Willful**  
19 **Disobedience, but Instead, it was Defendants that Misrepresented,**  
20 **and Knowingly Violated the Order.**

21 Willfulness is disobedient conduct "*not shown to be outside the control of the*  
22 *litigant.*" *Henry v. Gill Industries, Inc.*, 983 F.2d 943, 948 (9th Cir. 1993). However,  
23 all Plaintiff's alleged "disobedient conduct" directly resulted from the conduct of  
24 Defendants—which is completely outside the control of Plaintiff. As described  
25 above, Defendants repeatedly create roadblocks for Plaintiff to hinder its  
26 performance of full and efficient discovery. Moreover, as revealed by Exh. 16, Mr.  
27 Murphy was unsure about what would be revealed from the searches, but was  
28 reliant on the agreement of opposing counsel that they would agree to a new

1 CMKO, so as to allow the parties to extend dates of compliance. As supported in  
2 the Murphy Declaration, Defendants refused to meet and confer on search terms,  
3 deadlines, or even Plaintiffs' offer to show them the transactional documents that  
4 were the basis for RFP Nos. 1-20.

5 Defendants instead resort to patent falsifications to this Court such as, for  
6 example that "Plaintiff still has not produced a list of search terms or record  
7 custodians, let alone the ordered means to evaluate the same." On April 4, 2025,  
8 Plaintiff's counsel timely delivered to Defendants the requested search terms as  
9 well as list of record custodians. (Exh. 10.)

10 Finally, and most significant, Defendants' Motion fails to adduce any  
11 evidence of any aspect of the March 12, 2025 Order that was not compliant with  
12 and willfully so. Overall, this Court should not, and cannot find evidence to support  
13 any claim Plaintiff's alleged disobedience is willful, nor can it ignore Defendants'  
14 repeatable role in all of this

15 **D. The Motion Should be Denied because Defendants Fail to Provide**  
16 **any Actual Proof of Prejudice, when, in Fact, it was Their Conduct**  
17 **that Prejudiced Plaintiffs.**

18 Second, the Defendants have failed to demonstrate that it was prejudiced by  
19 any failure to comply with any specific aspect of the March 12., 2025 Order  
20 [Plaintiffs document production efforts. *See* Fed. R. Civ. P. 37(c)(1) ( ". . . unless  
21 the failure [to comply with Rule 26(e)] ... is harmless"); 7 James W.M. Moore, *et*  
22 *al.*, *Moore's Federal Practice* § 37.63 (3d ed. 2009) (sanctions may not be imposed  
23 if a party's failure to provide information as required by Rule 26(e) was harmless).

24 Indeed, what specifically is the injury Defendants have suffered? All that can  
25 be gleaned is that they did not receive a complete production by April 11, 2025.  
26 How did this prejudice them? There is no explanation. What discovery were they  
27 prevented from obtaining? What proof a trial?

28 At the end of the day, Plaintiff has produced relevant Board Minutes, the

1 financial statements and public filings, and public statements, and, as such, all that  
2 remains is a review of the 40,000+ emails consisting of documents tagged by the  
3 search terms, from which Plaintiff's counsel is searching for communications with  
4 franchisees, references to confidentiality, as well as references to the purchase and  
5 sale transaction (to the extent it refers to US operations and sale of IP). That is a  
6 slow process, and the productions will continue through the next few weeks. How  
7 these productions and their timing have produced Defendants have yet to be  
8 explained in their Motion. This is fatal

9 Interestingly, Plaintiff has yet to receive a single response to its  
10 Interrogatories and Requests for Production from Defendants prior to the close of  
11 discovery. Therefore, if any unfair prejudice has occurred, it is against Plaintiff to  
12 conduct efficient discoveries to support its case in chief.

13 E. **The Specific Sanctions Sought are So Unrelated to Any Order or**  
14 **Effect of Non-Compliance with Any Order that they Would**  
15 **Violate Due Process Even if the Other Elements Were Satisfied.**

16 1. This Court Should Not Strike or Dismiss Plaintiff's Claims for  
17 Misappropriation of Trade Secrets.

18 Violation of a discovery order does not warrant dismissal of the client's case  
19 unless the opposing party shows it was *prejudiced* thereby. See *Coleman v.*  
20 *American Red Cross* (6th Cir. 1994) 23 F3d 1091, 1095—violation of protective  
21 order by plaintiff's lawyer did not justify dismissal of action; see *Harmon v. CSX*  
22 *Transportation, Inc.* (6th Cir. 1997) 110 F3d 364, 368—dismissal upheld where  
23 counsel's *neglect* in failing to respond to interrogatories *prejudiced* defendant's trial  
24 preparation.

25 As explained above, Defendants have failed to demonstrate that it was  
26 prejudiced by Plaintiffs document production efforts which have included the  
27 gathering of 40,000+ documents using search terms that Defendants refused to meet  
28 and confer about. The other issue as to production of the specific trade secrets

1 themselves is a problem, caused by Defendants. (Murphy Decl., ¶ 43.)

2 The actual facts, and Plaintiffs actual attempts to meet and confer and  
3 comply have not prejudiced Defendants one bit, and the idea that Plaintiff would be  
4 prevented from trying this part of the case because it was delayed in producing  
5 documents int voluntarily agreed to produce has no support in the governing rules  
6 and authority.

7 2. An Order Prohibiting Plaintiff from Introducing at Trial Any  
8 Documents Not Produced by April 11, 2025 is Unwarranted.

9 This aspect of the Order makes no sense, particularly in the context of  
10 Defendants' counsel having agreed on the record on March 12, 2025 that the CMO  
11 would have to be changed, and all these dates modified, giving Plaintiff more time.  
12 There I nothing meaningful about April 11, 2025; an arbitrary date that Defendants  
13 have failed to explain has any bearing on what they can produce at trial.

14 Moreover, the over-inclusiveness of this demand is astonishing: any  
15 document even if not requested, and even if not called for by the Mar4ch 12, 2025  
16 Order would now be excluded. That evidentiary windfall has no support in the law.

17 3. An Order Deeming Matters at Issue and Designated Facts  
18 Established is Unwarranted.

19 This request for relief is not rooted in a purported discovery order at all.  
20 Indeed, the matters to be designated have no relationship to any supposed violation  
21 of the March 12, 2025 Order. This must be rejected.

22 F. **An Order Awarding Attorney's Fees Against Plaintiff and its**  
23 **Counsel is Unwarranted.**

24 One problem with the amount of Defendant's requested expenses under Rule  
25 37(b)(2)(C) is that they are not limited to those "caused by the failure" of Plaintiff  
26 to allegedly adhere to the March 12 order. Instead, Defendant's request includes  
27 attorney's fees incurred in preparing their Motion. This goes beyond what is  
28 permitted by Rule 37(b)(2)(C). See *Toth v. Trans World Airlines, Inc.* 862 F.2d

1 1381, 1386 (9th Cir. 1988); *Odigwe v. National Mentor Healthcare, LLC*, 616 Fed.  
2 Appx. 262 (9th Cir. 2015); 8B Charles Alan Wright, Arthur R. Miller & Richard L.  
3 Marcus, Federal Practice and Procedure § 2289 (3d ed. 2010) (“The expenses that  
4 may be recovered under [the rule] are those ‘caused by the failure’ to obey an order  
5 and therefore do not include the expense of obtaining the order itself.”). Precedent  
6 clearly holds that reasonable expenses do not include actual costs incurred in  
7 bringing Defendant’s Motion for Sanctions. See *Toth v. Trans World Airlines, Inc.*,  
8 862 F.2d 1381, 1386.

9 Moreover, Rule 37 precludes an award of attorney's fees where no court  
10 order was violated or, in the event there was some violation: (1) where any failure  
11 to comply was substantially justified; (2) where other circumstances make the  
12 award unjust and/or (3) where the moving party's attorney's fees were not “caused  
13 by the failure” to obey the court order.

14 There are clear, substantial justifications for any alleged failure to comply  
15 with a discovery order by Plaintiff. First, Defendants waited to serve their Rule 26  
16 Initial Disclosures until February 28, 2025, which was specifically designed to  
17 make it impossible for Plaintiff to use the disclosures as a basis and framework for  
18 discovery requests effectively, undermining Rule 26.

19 Second, on or around November and December 2024, Defendants requested  
20 a continuance of the trial date and dubiously informed Plaintiff they will propose  
21 the continuance to this Court. From January 8 to March 13, 2025, Defendants  
22 represented their agreement to an amended Case Management Order. Only until  
23 March 20, 2025, did Defendants’ counsel inform Plaintiff they no longer intended  
24 to amend the trial date and overall Case Management Order.

25 Lastly, as mentioned previously, Defendants failed to diligently provide  
26 responses to Plaintiff's discovery requests in good faith compliance with applicable  
27 provisions of the Federal Rules of Civil Procedure.

1  
2 Dated: May 9, 2025

**FOX ROTHSCHILD LLP**

3  
4 /s/ Michael D. Murphy

5 Michael D. Murphy  
6 Attorneys for Plaintiff and Counterclaim  
7 Defendant SHAKEY'S PIZZA ASIA  
8 VENTURES, INC. and Third Party  
9 Defendants CINCO CORPORATION,  
10 PC INTERNATIONAL PTE LTD., and  
11 SPAVI INTERNATIONAL USA, INC.  
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**CERTIFICATE OF COMPLIANCE**

The undersigned, counsel of record for Plaintiff SHAKEY’S PIZZA ASIA VENTURES, INC, certifies that this brief contains 6912 words, which complies with the word limit of L.R. 11-6.1.

/s/ Michael D. Murphy  
Michael D. Murphy



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**CERTIFICATE OF SERVICE**

The undersigned certifies that, on April 25, 2025, the foregoing document was electronically filed with the Clerk of the Court for the United States District Court, Central District of California, using the Court’s ECF filing system. I further certify that all counsel for all parties to this action are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

I certify under penalty of perjury that the foregoing is true and correct.

Dated: May 9, 2025

**FOX ROTHSCHILD LLP**

/s/ Michael D. Murphy  
Michael D. Murphy  
Attorneys for Plaintiff and Counterclaim  
Defendant SHAKEY’S PIZZA ASIA  
VENTURES, INC. and Third-Party  
Defendants CINCO CORPORATION,  
PC INTERNATIONAL PTE LTD., and  
SPAVI INTERNATIONAL USA, INC.